

NE-16
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MAY 24 1984

Gene Robinson, P.E.
Chief, Air Pollution Control Division
Department of Environmental Control
Box 94877, State House Station
Lincoln, Nebraska 68509-94877

Dear Mr. Robinson:

As you are aware, EPA has never taken final action to approve the Nebraska new source review (NSR) regulations. The NSR regulations were proposed for approval on August 31, 1983, at the same time as the Nebraska prevention of significant deterioration (PSD) regulations. Final action on that package has been delayed while EPA tried to determine how to respond to the October 11, 1983, court decision on EPA's stack height regulation and the stack height provisions in the PSD regulations.

The agency has developed an interim policy for handling stack height SIP actions (see attached memo). To implement this policy, the following paragraphs will be inserted in the Final Rulemaking to approve the Nebraska PSD regulations and we will need a letter from the State committing to implement what these paragraphs describe.

"Under this program, Nebraska will be issuing permits and establishing emission limitations that may be affected by the current judicial review of stack height regulations promulgated by EPA on February 8, 1982, (47 FR 5864). For this reason, EPA has requested that the State include the following caveat in all potentially affected permit approvals until the judicial process is completed and the stack height regulations are either upheld by the court or revised by EPA:

"In approving this permit, the Nebraska Department of Environmental Control has determined that the application complies with the applicable provisions of the stack height regulations promulgated by EPA on February 8, 1982, (47 FR 5864). Portions of these regulations have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit. Sierra Club v. EPA, 719 F. 2d 436 (D.C. Cir, 1983). That court decision has been appealed to the U.S. Supreme Court by a group of affected industries. Consequently, this permit may be subject to modification when the judicial process is completed and any regulations revised in response. This may result in revised emission limitations or may affect other actions by the source owners or operations!

ARBR:APDS:MCCARTER:bj:5/23/84:X3791

CARTER

LEIDWANGER

WHITMORE

WALTER

MCC

Leidwanger

Whitmore

Walter

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"Nebraska has made an enforceable commitment to include this caveat in all affected permits by letter dated *(date of your letter)*. ~~≠~~ This letter is part of the SIP which EPA is approving today."

If you feel you can write us a letter which commits you to inserting the second paragraph in all PSD permits you issue, then we could insert this language in the Final Rule and take final action to approve the NSR and PSD regulations.

Sincerely,

Carl M. Walter
Chief, Air Branch

Attachment